



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JANUARY 24, 2023

IN THE MATTER OF:

Appeal Board No. 626257

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective October 18, 2021, on the basis that the claimant was not totally unemployed. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed October 6, 2022 (), the Administrative Law Judge granted the claimant's application to reopen the prior default decision (022-11726) and overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board, insofar as it overruled the initial determination. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. The parties should have another opportunity to submit additional testimony and other evidence on this issue. At the further hearing, the claimant should produce her personal and business tax returns for 2020 and 2021, and the other documents listed on the Notice of Hearing for the October 6, 2022 hearing. The claimant should also produce documentation to support her contention that Children's Lit Corner LLC (LLC) is a not-for-profit entity. The claimant should fax or mail the documents listed on this Notice of Hearing to the hearing section at least three days before the next hearing date or be prepared to state why this was not done.

In preparation for the remanded hearing, the claimant is to be sent another copy of the hearing packet that includes the notice of hearing for the October 6, 2022 hearing.

In addition, both the claimant and the Commissioner should be questioned regarding the Department of Labor Questionnaire (TCC 343.5), as it is completed but not signed by the claimant. The parties should be questioned regarding whether the claimant completed this questionnaire and provided the answers. The claimant should also be questioned about the answers concerning whether business operations will resume, and whether she pays rent for the LLC's business space (answers 9b and 13-14). The Questionnaire should be entered into the record in the usual manner.

Finally, the parties should be questioned regarding any question that claimant was asked regarding other business income contained on Hearing Exhibit 3. The claimant should be questioned about what income she was referring to.

In the discretion of the Administrative Law Judge, additional relevant testimony and other evidence may be received.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge, insofar as it overruled the initial determination of lack of total unemployment, be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issue of lack of total unemployment, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issue of lack of total unemployment, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER